

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

ANGEL GONZALEZ-MENDEZ,

Petitioner

v.

UNITED STATES OF AMERICA,

## Respondent

CIVIL 11-1788 (PG)  
(CRIMINAL 04-217(PG))

## OPINION AND ORDER

This matter is before the court on motion brought under 28 U.S.C. § 2255 to vacate, set aside or correct sentence file by petitioner Angel Gonzalez-Mendez on August 12, 2011. (Docket No. 1).<sup>1</sup> On August 18, 2006, he entered a plea of guilty to aiding and abetting bank robbery and aiding and abetting in the unlawful possession of a firearm in relation to a crime of violence, violations of Title 18 U.S.C. §§ 2, 924(c)(1)(A)(ii) and 2113 (a) & (d). (Crim. No. 04-217 (PG), Docket No. 309). At the sentencing hearing held on December 19, 2006, petitioner

<sup>1</sup>The motion seeks that the court authorize this request as a second or successive application for relief under 28 U.S.C. § 2255. See Crim. No. 04-217 (PG), Docket No. 479 (denial of Fed. R. Crim. P. 60(b) motion. In that motion, petitioner seeks relief similar to that sought herein and for much the same reasons. The court, however, found the petition untimely. Therefore, this is a first petition. If the court were to consider this request a second or successive application for relief, summary disposition would follow. See e.g. *Cintron-Caraballo v. United States*, 865 F. Supp. 2d 191, 194-95 (D.P.R. 2012).

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4 received a term of imprisonment of 48 months as to Count Three of the Second  
5 Superceding Indictment, and 60 months as to Count Four, to be served  
6 consecutively to the sentence of Count Three. (Crim. No. 04-217 (PG), Docket  
7 Nos. 346, 348). The other counts in which petitioner was charged were dismissed  
8 upon sentencing. The sentence received was the one negotiated with the United  
9 States as the result of a plea agreement entered into under the provisions of Fed.  
10 R. Crim. P. 11(c)(1)(A) & (B), signed on August 18, 2006, and which the court  
11 honored at sentencing. No appeal was taken from the judgment of conviction  
12 docketed on December 21, 2006. Thus the conviction became final ten days after  
13 judgment was entered. See Fed. R. App. P. 4(b)(1)(A)(i)(2006).

14 Petitioner argues in his motion that this is a unique case and that he  
15 negotiated a binding agreement with the government throughout the month of  
16 July, 2006. He charges that the government has breached the contract under  
17 both Crim. No. 07-453 (JAF) and Appeal No. 09-1299<sup>2</sup>. The agreement included  
18 a provision that the government would not use his name in future investigations  
19 related to Crim. No. 04-217 (PG). (Docket No. 1 at 3). He argues that as a result

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24 <sup>2</sup> In United States v. Fernandez-Hernandez, 652 F.3d 56, 61 (1<sup>st</sup> Cir. 2011),  
25 petitioner is mentioned as having been the owner of a drug point prior to his  
26 arrest in 2004 for bank robbery. In that case, petitioner received three life  
27 sentences, the court having applied United States Sentencing Guidelines §  
28 2D1.1(d), the "murder cross-reference." Crim. No. 07-453 (JAF), Docket Nos.  
1692, 1832 (Sent. Tr. at 24). Those murders occurred on April 25, 2004. United  
States v. Fernandez-Hernandez, 652 F.3d at 68.

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4 of the breach of the plea agreement, he has been subjected to "double jeopardy  
5 collateral estoppel under equitable estoppel, resulting in a miscarriage of justice  
6 under the circumstances. Docket No. 1 at 3. He stresses that the matter must be  
7 resolved by this court since the binding plea agreement is enforced by this  
8 sentencing judge. He stresses that this motion is based upon newly discovered  
9 evidence (in the form of information provided in a Rule 404(b) motion which was  
10 related to him by a fellow inmate), as well as a malicious and vindictive  
11 prosecution, and a jurisdictional defect and fraud on the court created by "double  
12 jeopardy collateral estoppel". Petitioner attacks the performance of his attorney  
13 in Crim. No. 07-453 (JAF) and argues that counsel therein knew of the breached  
14 agreement and failed to bring it to the attention of either the trial or appellate  
15 court.

16 On September 29, 2011, the government filed a response in opposition to  
17 the petitioner's motion arguing basically that it should be summarily denied  
18 because it is untimely. However, the government addresses the merits of the  
19 petition to a degree and clearly shows that petitioner was not subjected to double  
20 punishments based on the same offense. (Docket No. 3.) The government  
21 retorts that the issues complained of in petitioner's motion pertain to the  
22 conviction in Crim. No. 07-453 (JAF), and not to Crim. No. 04-217 (PG).  
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4 Notwithstanding the argument of misplacement of pleading, the government  
5 ultimately espouses the position that the motion is time-barred. I agree.  
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7 The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)  
8 instituted a limitations period of one year from the date on which a prisoner's  
9 conviction became final within which to seek federal habeas relief. See Pratt v.  
10 United States, 129 F.3d 54, 58 (1<sup>st</sup> Cir. 1997); United States v. Caribe-Garcia, 711  
11 F.Supp.2d 225, 227 (D.P.R. 2010). Clearly, the present petition was filed four and  
12 one-half years from the date petitioner's sentence became final and unappealable.  
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14 In its pertinent part, section 2255 reads:

15 A 1-year period of limitation shall apply to a motion under  
16 this section. The limitation period shall run from the  
17 latest of-  
18 (1) the date on which the judgment of conviction  
19 becomes final;  
20 (2) the date on which the impediment to making a motion  
21 created by governmental action in violation of the  
22 Constitution or laws of the United States is removed, if  
23 the movant was prevented from making a motion by such  
24 government action;  
25 (3) the date on which the right asserted was initially  
26 recognized by the Supreme Court, if that right has been  
27 newly recognized by the Supreme Court and made  
28 retroactively applicable to cases on collateral review; or  
the facts supporting the claim or  
claims presented could have been discovered through the  
exercise of due diligence.

28 U.S.C. § 2255, ¶ 6.

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4 Petitioner's memorandum of law reveals no circumstances which would  
5 equitably toll the limitations period of the statute. See e.g. Ramos-Martinez v.  
6 United States, 638 F.3d 315, 321-24 (1<sup>st</sup> Cir. 2011); Trapp v. Spencer, 479 F.3d  
7 53, 59 (1<sup>st</sup> Cir. 2007). Therefore, one is forced to conclude that petitioner's claim  
8 is time-barred. See Trenkler v. United States, 268 F.3d 16, 24-27 (1<sup>st</sup> Cir. 2001).  
9 In fact, the identical determination has already been made by this court in Crim.  
10 No. 04-217 (PG), Docket No. 479 at 2-3. Furthermore, any purported  
11 transgression of the plea agreement was not performed in this case but in a case  
12 that was filed two years after petitioner was sentenced. See United States v.  
13 Fernandez-Hernandez, 652 F.3d at 61; Crim. No. 07-453 (JAF), Docket No. 1131).  
14 Transposing any remedy to this case from the future case confronts the redoubt  
15 of finality and taxes logic. If a breach to the agreement occurred, the offended  
16 court has jurisdiction for purposes of enforcement or remedy. See Crim. No. 04-  
17 217 (PG), Docket No. 479 at 2 n.1. ("Inasmuch as the government's alleged  
18 violation took place in Crim. Case 07-453 (JAF), the Court believes that the  
19 Defendant should have sought relief therein"). Indeed, petitioner has presented  
20 the issues of breach of contract and double jeopardy to the sentencing court in  
21 Crim. No. 07-453 (JAF). See Civil No. 12-1857 (JAF), Docket No. 1 at 4, ¶ 12.  
22 Along with that issue is the one related to the use of Rule 404(b) information in the  
23 later case, which use leads to the breach of contract argument. Petitioner provides  
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4 more detail in that collateral attack in relation to both the breach of contract and  
5 the double jeopardy arguments. See Civil No. 12-1857 (JAF), Docket No. 1 at 7,  
6 ¶ 12. Finally, he has asked the court in Crim. No. 07-453 (JAF) to "quash" the  
7 indictment based upon double jeopardy, collateral estoppel, and Blockburger v.  
8 United States, 284 U.S. 299, 304, 52 S.Ct. 180 (1931)<sup>3</sup>, and the argument of his  
9 "actual/factual innocence." Civil No. 12-1857 (JAF), Docket No. 18 at 1. The  
10 issues are already in the correct court. This is not that court.  
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13 In view of the above, the Motion to Vacate, Set Aside or Correct Sentence  
14 is denied, and this action is dismissed with prejudice. The Clerk will enter  
15 judgment dismissing this action.

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17 Based upon my reasoning above, no certificate of appealability should be  
18 issued in the event that Petitioner files a notice of appeal, because there is no  
19 substantial showing of the denial of a constitutional right within the meaning of  
20 Title 28 U.S.C. § 2253(c)(2).

21 IT IS SO ORDERED.  
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23 At San Juan, Puerto Rico, this 21st day of October, 2013.

24 S/JUAN M. PEREZ GIMENEZ  
25 United States District Judge  
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28 <sup>3</sup>This case does not invite a Blockburger analysis. See e.g. United States v.  
Ramallo-Diaz, 455 F. Supp. 2d 22, 26-27 (D.P.R. 2006).